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Supreme Court, U.S.
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No. _____

IN THE

Supreme Court of the United States

AARON RAISER,
Petitioner,

v.

BRIGHAM YOUNG UNIVERSITY,
Respondent.

October Term, 2007

Petition for Writ of Certiorari to the

Supreme Court of Utah

Petition for Writ of Certiorari

Aaron Raiser, Pro Se
20058 Ventura Blvd. #113,
Woodland Hills, CA 91364

Questions Presented for Review

1. (a) Whether the state of Utah violated Due Process of Law under the Fifth and Fourteenth amendment by issuing a warrant for Petitioner's arrest for not attending a hearing in a civil case where Petitioner was the plaintiff and living in another state, was homeless, near penniless, and did not have the financial means to travel to Utah for the civil hearing?

   (b) Whether Brigham Young University (Respondent) violated Utah Rules of Professional Conduct 3.3(d) by scheduling a hearing ex parte and obtaining an ex parte Order allowing for Petitioner's arrest if he did not attend the hearing, where Brigham Young University was aware Petitioner was living in another state, was homeless and near penniless, and could afford to travel to the hearing?

   (c) Whether Due Process of Law is violated where Petitioner was Ordered to pay Brigham Young University $1957.40 under a state Rule 11 provision which allows the prevailing party in a Rule 11 motion for sanctions to be given attorney fees, where Petitioner filed a motion for sanctions when Brigham Young University went to a state court judge ex parte and scheduled a hearing and obtained an ex parte Order allowing for Petitioner's arrest if he did not attend the hearing where Brigham Young University was aware Petitioner was homeless, near penniless and living in another state and could not attend the hearing?

   (d) Whether the Utah Court of Appeals (Cert. Denied by the Utah Supreme Court) erred in upholding $1957.40 in sanctions when Petitioner filed a motion for sanctions against BYU for obtaining an arrest warrant against Petitioner in violation of Utah R. Prof. Conduct by

scheduling an ex parte hearing with the state judge and also an ex parte Order requiring Petitioner's attendance or facing arrest, where BYU was aware Petitioner was living in another state, homeless, near penniless and did not have the means to attend the hearing?

2. (a) Whether Due Process of Law is violated where Petitioner was Ordered to pay Brigham Young University $2791.75 under a state Rule 11 provision allowing the prevailing party in a Rule 11 motion for sanctions to be given attorney fees, where Brigham Young University removed a state court case to federal court under 28 U.S.C. §1441 where no federal cause of action existed, which improper removal forced the state court case to be stayed for 1 year, where the Federal Court in denying removal held that the removal had no basis in law?

   (b) Whether a state court must, under the Full Faith and Credit Clause of the U.S. Constitution, give a Federal Court ruling that BYU's removal to Federal Court of the state case had no basis in law, violating 28 U.S.C. §1441, where no federal cause of action existed to support removal, where the state court in the face of the Federal Court ruling held that BYU's conduct had basis in 28 U.S.C. §1441 and therefore Petitioner should be sanctioned $2791.75 under a state Rule 11 provision allowing the prevailing party to receive attorney fees?

   (c) Whether a state court must, under the Supremacy Clause of the U.S. Constitution, honor the ruling of a Federal Court which held that BYU's removal to Federal Court of the state case had no basis in law, violating 28 U.S.C. §1441, where no federal cause of action existed supporting removal, where the state court in the face of the Federal Court ruling held that BYU's conduct was supported by 28 U.S.C. §1441 and that Petitioner should be therefore be sanctioned $2791.75 for filing a motion for sanction over the improper removal?

(d) Whether the Utah Court of Appeals (Cert. Denied by the Utah Supreme Court) erred in upholding $2791.75 in sanctions when Petitioner filed a motion for sanctions against BYU for obtaining removing a state case to federal court where no federal cause of action existed, where the Federal Court ruled that BYU's removal had no basis in law, where the improper removal resulted a 1 year delay in the state case?

3. Whether Due Process of Law requires that a state make a subsidiary finding that a motion for sanctions is without merit prior to issuing a monetary penalty against the moving party when the moving party does not prevail on the motion for sanctions?

4. Whether under the totality of the circumstances manifest injustice has occurred where Petitioner was sanctioned a total of $4748.15 for filing motion for sanctions (1) when BYU violated Utah Rule of Professional Conduct 3.3(d) in seeking and obtaining an arrest warrant ex parte and failing to inform the judge that Petitioner did not have the ability to attend the hearing they scheduled which would result the arrest warrant and (2) in removing the state case to federal court where no federal cause of action existed and where the Federal Court found that no federal cause of action existed as mandated by 28 U.S.C. 1441?

TABLE OF CONTENTS

Questions Presented for Review iii

Table of Contents vii

Table of Citations viii

Opinions Below 1

Jurisdictional Statement 1

Constitutional Provisions, Statutes 1

Statement of the Case 1

Argument - Reasons for Granting the Writ 8

I. A State Court Can Not Issue an Arrest Warrant for a plaintiff in a civil case for not attending a hearing scheduled ex parte by opposing counsel, where the plaintiff was homeless, living in another state, was struggling to find enough money for food from day to day and had no means to travel to the hearing. 8

II. A State Court can not Rule that the defendant's actions did have basis in law, where the Federal Court Ruled that the defendant's improper removal of a state court case had no basis in law, violating 28 U.S.C. §1441, and then fine the plaintiff $2791.75 for bringing a motion for sanctions regarding the improper removal where the improper removal resulted in a 1 year delay in the state case 11

III. A State Court Must First Make a Finding that a State Fed. R. Civ. Proc. 11 type Motion for Sanctions be Frivolous or Without Merit Prior to Imposing Sanctions on the Party Seeking the Rule 11 Sanctions when the Moving Party does not Prevail on the Motion 14

IV. Under the Totality of the Circumstances, where a state court continually allows the defendant to violate the state rules of professional conduct and other rules of procedure and then continually imposes sanctions on the plaintiff for attempting to get the state court to take remedial action, including allowing the defendant to obtain an arrest warrant for the plaintiff in violation of the Utah Rules of Professional Conduct, a manifest injustice occurs meriting this Court's intervention 15

V. Conclusion & Relief Sought 16

TABLE OF CITIATIONS

Constitutional Provisions

U.S. Constitution *Article* IV 1, 11

U.S. Constitution *Article* VI 1, 13

U.S. Constitution Amend. IV 2, 10

U.S. Constitution Amend. XIV 2, 10

Rules

Utah R. Civ. Proc. 11(c) 3
Utah R. Civ. Proc. 69 ..... 4, 6
Utah R. Prof. Conduct 3.3(d) 4, 9-10

Statutes

28 U.S.C. § 1257 1
28 U.S.C. §1441(c)..... 4,11-13

Cases

Knights of Pythias v. Meyer, 265 U.S. 30, 33 (1924) 12
In re Cannatella, 132 P.3d 684, 686 (2006) 10

APPENDIX

Appendix A – Utah Supreme Court Order Denying Certiorari

Appendix B - Utah Court of Appeals Order Upholding Sanctions

Appendix C – Federal Court Ruling Denying Removal to Federal Court (From State Trial Court Record)

Appendix D – Excerpts from Petitioner's Opening Brief in the Utah Court of Appeals

Appendix E – Excerpts from Petitioner's Reply Brief in the Utah Court of Appeals

Appendix F – Excerpts from Federal Court Hearing (From State Trial Court Record)

Appendix G – Ex Parte Order Requiring Petitioner's attendance at hearing or face arrest, Motion; (From State Trial Court Record)

OPINIONS BELOW

On June 29, 2007 the Utah Supreme Court entered an Order denying Certiorari (Appendix A).

On March 22, 2007 the Utah Court of Appeal entered an Order and Decision Upholding Sanctions. (Appendix B).

JURISDICTIONAL STATEMENT

The date the order and judgment was entered by the Utah Supreme Court denying Certiorari was June 29, 2007.

This Court's jurisdiction to review, on a writ of certiorari, the decision of the Utah Supreme Court is conferred by 28 U.S.C. § 1257.

CONSTITUTIONAL PROVISIONS

Article. IV. Section 1.

Full Faith and Credit shall be given in each State to the public Acts, Records, and judicial Proceedings of every other State. And the Congress may by general Laws prescribe the Manner in which such Acts, Records and Proceedings shall be proved, and the Effect thereof.

Article VI

All debts contracted and engagements entered into, before the adoption of this Constitution, shall be as valid against the United States under this Constitution, as under the Confederation.

This Constitution, and the laws of the United States which shall be made in pursuance thereof; and all treaties made, or which shall be made, under the authority of the United States,

shall be the supreme law of the land; and the judges in every state shall be bound thereby, anything in the Constitution or laws of any State to the contrary notwithstanding.

The Senators and Representatives before mentioned, and the members of the several state legislatures, and all executive and judicial officers, both of the United States and of the several states, shall be bound by oath or affirmation, to support this Constitution; but no religious test shall ever be required as a qualification to any office or public trust under the United States.

Amendment V

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a grand jury, except in cases arising in the land or naval forces, or in the militia, when in actual service in time of war or public danger; nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

Amendment XIV

Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the state wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

RULES

Utah Rule of Civil Procedure 11

***

(b) Representations to court. By presenting a pleading, written motion, or other paper to the court (whether by signing, filing, submitting, or later advocating), an attorney or unrepresented party is certifying that to the best of the person's knowledge, information, and belief, formed after an inquiry reasonable under the circumstances,

(b)(1) it is not being presented for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation;

(b)(2) the claims, defenses, and other legal contentions therein are warranted by existing law or by a nonfrivolous argument for the extension, modification, or reversal of existing law or the establishment of new law;

(b)(3) the allegations and other factual contentions have evidentiary support or, if specifically so identified, are likely to have evidentiary support after a reasonable opportunity for further investigation or discovery; and

(b)(4) the denials of factual contentions are warranted on the evidence or, if specifically so identified, are reasonably based on a lack of information or belief.

(c) Sanctions. If, after notice and a reasonable opportunity to respond, the court determines that subdivision (b) has been violated, the court may, subject to the conditions stated below, impose an appropriate sanction upon the attorneys, law firms, or parties that have violated subdivision (b) or are responsible for the violation.

Utah Rule of Civil Procedure 69

Abrogated.

Utah Rules of Professional Conduct 3.3
- Candor Toward the Tribunal.
(d) In an ex parte proceeding, a lawyer shall inform the tribunal of all material facts known to the lawyer that will enable the tribunal to make an informed decision, whether or not the facts are adverse.

Statutes

28 U.S.C. §1441

(a) Except as otherwise expressly provided by Act of Congress, any civil action brought in a State court of which the district courts of the United States have original jurisdiction, may be removed by the defendant or the defendants, to the district court of the United States for the district and division embracing the place where such action is pending. ***

STATEMENT OF THE CASE

The underlying case, filed in Utah state court in August 2002, alleged common law claims for defamation where BYU's school newspaper published 2 defamatory articles of and concerning Petitioner. Claims for False Light and False Imprisonment were also included surrounding conduct of BYU police and personnel they supervised.

In September 2002 BYU removed the case to Federal Court relying on 28 U.S.C. §1441 which allows for removal if the state case alleges a federal cause of action. The state case, however, did not state any federal causes of action and could not have been originally brought in Federal Court.

Removal was accordingly denied (Appendix C) within 1 month, and Petitioner immediately filed a motion in federal court to remand the case back to state court. However, the federal judge presiding in the case would not remand the case back to federal court. Petitioner made 2 phone calls to the judge's chambers asking them if they could do something to get the case remanded yet the case did not get remanded until September 2003.

Petitioner considered the 1 year delay to be damaging to the state case and because BYU erred in removing the case where not federal cause of action existed, Petitioner filed a motion for sanctions in state court.

Despite the Ruling by the Federal Court that removal lacked basis in law, the state court judge ruled that it had basis in law, denied Petitioner's motion for sanctions and under a Fed. R. Civ. Proc. 11 type state rule, and awarded BYU attorney fees of $2791.75 as the prevailing party.

In April 2005 BYU attended a federal court hearing where Petitioner appeared by telephone from California where he was living. At that hearing BYU learned that Petitioner was homeless

and barely had enough money for food from day to day, and that Petitioner did not have the means to travel to Utah. (Appendix F).

In May 2005 after learning that Petitioner did not have the financial ability to travel to Utah, BYU went to the state court judge ex parte and scheduled a hearing where BYU required Petitioner's attendance and BYU at the same time obtained from the state court judge, ex parte, an Order stating that if Petitioner did not attend the hearing he would be arrested. (Appendix G) Petitioner was unable to attend the hearing and at the hearing the warrant for Petitioner's arrest was issued at BYU's request. That arrest warrant was disruptive as it disallowed Petitioner any opportunity to travel to Utah to attend court hearings etc. as he would have been arrested had he entered the state. BYU also misled the state judge by claiming the arrest warrant had basis in Utah R. Civ. Proc. 69 where that Rule is non-exist ant.

Petitioner carefully read the Utah Rules of Professional Conduct (URPC) and found that Rule 3.3(d) required BYU in an ex parte proceeding to make disclosure to the state court judge of all facts material to the decision the judge would make and informing the judge that Petitioner did not have the financial means to travel to Utah - according to Utah case law - is material to the judge's decision regarding the mandated attendance at the hearing and subsequent arrest warrant.

Believing BYU had materially violated URPC 3.3(d) Petitioner sought sanctions against BYU under a state Rule 11 type statute after they refused to withdraw the arrest warrant.

The judge simply ruled in BYU's favor on the motion for sanctions, holding that independent of Petitioner's financial condition BYU could seek and obtain the arrest warrant ex parte. In ruling in favor of BYU the judge also awarded BYU attorney fees of $1957.40.

The arrest warrant was issued July 2005. Petitioner contacted the judge's chambers November 2005 and they

confirmed that the arrest warrant was still in effect. Petitioner had also filed a motion to vacate the arrest warrant with the state court judge and in February 2006 the judge denied the motion and refused to vacate the arrest warrant.

The Utah Court of Appeals upheld the trial court's conduct in the matter in every respect and held that although the Federal Court found BYU's removal lacked basis in law and was improper, that the state court could still fine Petitioner $2791.75 for seeking sanctions for the improper removal and 1 year delay in the state case which it caused.

With respect to the arrest warrant the Utah Court of Appeal held that although Petitioner did not have the financial means to attend the Utah hearing, he still could be arrested because not attending was considered a willful disobedience to a lawful court Order.

With respect to whether the Order was lawful and whether BYU violated Utah R. Prof. Conduct 3.3 in not informing the state court judge that Petitioner did not have the financial means to travel from California to Utah for the hearing, the court simply alleged that the issue was not adequately briefed. Appendix D & E are included and contain experts from Petitioner's Opening and Reply Brief showing about 11 pages, with cites to the record on appeal and applicable case law which showed BYU in fact violated Rule 3.3(d) and that the matter was in fact adequately briefed.

The Utah Supreme Court denied Certiorari and this appeal ensues.

ARGUMENT
REASONS FOR GRANTING THE WRIT

I.

A State Court Can Not Issue an Arrest Warrant for a plaintiff in a civil case for not attending a hearing scheduled ex parte by opposing counsel, where the plaintiff was homeless, living in another state, was struggling to find enough money for food from day to day and had no means to travel to the hearing.

A. Due Process of Law Violated

At the heart of Due Process of Law is notice and opportunity to be heard prior to the imposition of any punishment. This becomes perilous when an attorney seeks, and obtains, an order for a plaintiff to attend a hearing which they scheduled with the state judge ex parte, or face arrest.

In the instant matter, the state court judge in fact issued the arrest warrant at BYU's behest when Petitioner failed to appear for the state court hearing which BYU scheduled ex parte. The state court judge made no effort, despite being aware Petitioner lived in another state to determine whether Petitioner's failure to attend was in willful disobedience to a lawful order.

While BYU remained silent, not informing the judge at any point that Petitioner was financially incapable of attending the hearing, the state court judge nonetheless should have made an independent inquiry, given the circumstances and nature of the hearing.

In other words, the judge should have issued an Order to Show Cause to the Petitioner, prior to issuing the arrest warrant. That would have been especially logical given that BYU scheduled the hearing ex parte and obtained the Order

for Petitioner's attendance ex parte which would allow the issuance of the arrest warrant.

What is also interesting in the present case is that after the arrest warrant was issued, the state court judge permitted Petitioner to appeal the imposition of the $2791.75 fees *in forma pauperus*. In allowing *in forma pauperus* status, Petitioner submitted a notarized affidavit per Utah Rules showing that Petitioner was living substantially below the poverty level and had about $150 in assets. Yet when Petitioner motioned for the trial judge to vacate the arrest warrant, the trial judge nonetheless refused to vacate the arrest warrant although the trial judge was aware of Petitioner's financial inability to attend the hearing.

B. BYU Violated URPC 3.3(d)

The Utah Court of Appeals alleged that the issue of whether BYU violated rule 3.3(d) was not adequately briefed. See Memorandum Decision found in Appendix B at 3.

> Next, Raiser argues that the bench warrant that issued in this case was "improperly obtained." This issue is inadequately briefed. "It is well established that a reviewing court will not address arguments that are not adequately briefed."

See *Id.* at 3.

However, Appendix D and E show contrary. There Petitioner showed (1) counsel for BYU attended a hearing at which Petitioner informed the court he living in California, was homeless, barely had enough money for food from day to day, and had informed the court he could not travel to Utah for a deposition. See Appendix D at 6. (See also Appendix F) (2) Petitioner showed that BYU thereafter went ex parte and scheduled a hearing and obtained an ex parte Order requiring Petitioner to attend the hearing of fact arrest. See Appendix D at 6. (See also Appendix G) (3) Petitioner

showed that Utah R. Prof. Conduct 3.3(d) requires that in an ex parte proceeding BYU inform the judge of all material facts which the judge would need to make in informed decision. See Appendix D at 7-8. (4) Petitioner also showed that the ability to travel from California to Utah for the hearing – or face arrest – was material to the judge's decision on the ex parte matter. See Appendix D at 8. See also Appendix E at 3-4 (citing Utah case law *In re Cannatella*, 132 P.3d 684, 686 (2006) that the "ability to comply" with an Order is material).

C. Fining Petitioner $1957.40 a Denial of Due Process of Law.

Because BYU violated Utah R. Prof. Conduct 3.3(d) in obtaining the arrest warrant it is a denial of due process of law to in turn fine Petitioner $1957.40 for filing a motion for sanctions regarding that improper conduct.

The Utah Court of Appeals held that the arrest warrant, and therefore sanctions, against Petitioner was proper because a person who does not have the financial means to travel to Utah for the civil hearing is in willful disobedience to a lawful court order. To arrive at that conclusion they had to forego any analysis of the legality of the arrest warrant or how it was obtained.

> Because Raiser's refusal to participate in supplemental proceedings, rather than his financial status, caused the district court to issue a bench warrant, Raiser's constitutional concerns are unfounded.

See Appendix B at 3.

Where a citizen does not have the financial means to travel to Utah for a civil hearing, they can not be in willful disobedience to a court order and the Utah Court of Appeals holding must be overturned.

D. Utah Court of Appeals Erred in Upholding the $1957.40 Sanction.

Because BYU violated Utah R. Prof. Conduct 3.3(d) in obtaining the arrest warrant the Utah Court of Appeals decision to uphold the $1957.40 fine for Petitioner's filing a motion for sanctions is incorrect and must be overturned.

II.

A State Court can not Rule that the defendant's actions did have basis in federal law, where the Federal Court Ruled that the defendant's improper removal of a state court case had no basis in federal law, violating 28 U.S.C. §1441, and then fine the plaintiff $2791.75 for bringing a motion for sanctions for the improper removal where the improper removal resulted in a 1 year delay in the state case

A. Due Process of Law is violated

Due process of law means the opportunity to be heard prior to the imposition of a punishment. In the instant matter Petitioners was fined $2791.75 where the only wrongdoing was that Petitioner complained via a motion for sanctions regarding the improper removal of the state court case to federal court which resulted in a 1 year delay in the state case where the federal court found as a matter of law that BYU violated 28 U.S.C. §1441.

To fine a person $2791.75 for complaining to the judge about the misconduct of the defendant, where the only apparent recourse is with the state court judge, due process of law is violated. Prior to fining a person $2791.75 there has to be some collateral finding that the Petitioner was abusing the motion for sanction process.

B. Full Faith and Credit Clause of the U.S. Constitution Mandates that Sanctions Not Be Imposed

While the full faith and credit clause is typically applied to judicial rulings between states, it also has been held by

this Court to mean that a state court must give full faith and credit to judicial proceedings of the federal courts.

> While the judicial proceedings of the federal courts are not within the terms of the constitutional provision, such proceedings, nevertheless, must be accorded the same full faith and credit by state courts as would be required in respect of the judicial proceedings of another state. Hancock National Bank v. Farnum, 176 U.S. 640, 644 , 20 S. Sup. Ct. 506; Embry v. Palmer, 107 U.S. 3, 9 , 2 S. Sup. Ct. 25.

See *Knights of Pythias v. Meyer*, 265 U.S. 30, 33 (1924).

In the instant matter, the Federal Court for the District of Utah ruled that BYU's removal was without basis in law.

> 28 U.S.C. § 144 1(c) states: "Whenever a separate and independent claim or cause of action within the jurisdiction conferred by section 1331 of this title is joined with one or more otherwise non-removable claims or causes of action, the entire case may be removed and the district court may determine all issues therein, or, in its discretion, may remand all matters in which State law predominates."
>
> Here, Defendant has failed to join the non-removable state claims with a cause of action within the jurisdiction of this court conferred by 28 U.S.C. § 1331. Simultaneously consolidating the state court claims with an existing federal court case is insufficient to meet the requirements of 28 U.S.C. § 1441(c). Accordingly, Defendant has failed to establish that this court has original jurisdiction over the state court actions, and therefore, removal is improper.

See *Order*, Appendix C at 2-3.

Sanctions under Utah's Rule 11 Civil Procedure rule is inextricably entwined with federal law. Utah's Rule 11 allows for sanctions if the removal had no basis in law and that law is federal law, specifically 28 U.S.C. § 1441(c). The Utah Court of Appeals however ruled that although the federal court found no basis in law that the state court judge could find that removal had basis in law.

> Here, the district court discussed the underlying procedural details and determined that the University's decision to remove this case to federal court "was not done with an improper motive or . . . without a basis in law.

See Appendix B at 2 (emphasis added).

Having "basis in law" is critical because Utah State Rule 11 sanctions are proper where there is no "basis in law" for a litigant's removal of the case.

In effect, the Utah Court of Appeals has held that the state court judge can find that BYU's removal maneuver "had basis in law" yet the federal court ruled that it did not.

Because this Court has held that a state court must give full faith and credit to a federal court's ruling on a matter, the Utah Court of Appeals is incorrect in allowing $2791.75 sanctions against Petitioner because as a matter of law BYU's removal attempt had no basis in law, the law being 28 U.S.C. § 1441(c).

C. The Supremacy Clause of the U.S. Constitution Mandates that Sanctions Not Be Imposed

For the same reasons as argued above where the federal court issues a ruling on a federal statute - 28 U.S.C. § 1441(c) – that ruling must be followed by the state court as the federal court holding on federal law must take precedence over a

state court's ruling on the same matter.

D. The Decision of the Utah Court of Appeals is Incorrect Upholding Sanctions against Petitioner

Because the federal court issues a ruling on a federal statute - 28 U.S.C. § 1441(c) – that BYU's attempted removal had no basis in law, and because Utah State Rule 11 allows sanctions against BYU where their attempted removal has no basis in law, the Utah Court of Appeals upholding sanctions against Petitioners is incorrect.

III.

A State Court Must First Make a Finding that a State Fed. R. Civ. Proc. 11 type Motion for Sanctions be Frivolous or Without Merit Prior to Imposing Sanctions on the Party Seeking the Rule 11 Sanctions when the Moving Party does not Prevail on the Motion

In many ways a motion for Rule 11 sanctions is similar in nature to the criminal justice system. Here, the state court judge must police the proceedings to ensure civility and that the rules of professional conduct etc. are not violated. If they are, and a litigant is injured or his case damaged, it can, and perhaps should be reported so the judge can take corrective action on the matter.

In the criminal justice system not every criminal who is accused of wrongdoing is convicted, even when they in fact are guilty. If in the criminal justice system the accuser was required to pay the legal fees of the accused when the accused were acquitted, that would have a severe impact on whether a citizen would report a crime or not.

If however, the citizen were found to be making baseless or false accusations, then perhaps some punitive sanction against the false accuser would be proper.

In the present matter, Petitioner asks for the same standard to be applied in Civ.Proc. Rule 11 type sanction cases awarding attorney fees. In other words, the trial court judge must first make an independent determination that the motion for sanctions was frivolous or without basis prior to issuing the attorney fee sanctions.

IV.

Under the Totality of the Circumstances, where a state court continually allows the defendant to violate the state rules of professional conduct and other rules of procedure and then continually imposes sanctions on the plaintiff for attempting to get the state court to take remedial action, including allowing the defendant to obtain an arrest warrant for the plaintiff in violation of the Utah Rules of Professional Conduct, a manifest injustice occurs meriting this Court's intervention

Because BYU obtained the arrest warrant in violation of Utah Professional conduct 3.3(d) Petitioner can not be sanctioned for filing a motion for sanctions against BYU's unlawful and harassing conduct.

Because BYU removed the state court case to federal court in violation of 28 U.S.C. §1441 and that was found to be the case by the federal court who should have the final say in the matter, which unlawful removal materially delayed the state court case by 1 year, Petitioners can not be sanctioned for filing a motion for sanctions to redress BYU's wrongful conduct.

To allow BYU to so violate the rules and laws of the land designed to bring about the just administration of law and to continually financially penalize the party injured by their conduct is a manifest injustice meriting this court's intervention.

IV.

CONCLUSION & RELIEF SOUGHT

The writ of certiorari should be allowed on the grounds that a manifest injustice has occurred to Petitioner in the manner in which the state court has financially penalized Petitioner for the wrongful conduct of BYU. Additionally, due process of law has been violated in the manner in which the state court has issued an arrest warrant for Petitioner where he did not have the financial means to attend the state court hearing and where the hearing and Order requiring attendance or to face arrest was obtained in an unlawful manner.

Additionally, for the state court to overrule the Federal court's holding that a federal statute was violated and then impose sanctions on Petitioner violates the obligation that a state court has to give full faith and credit to a federal court's holding on federal law and also violates the supremacy clause. Petitioner therefore asks that the financial penalties imposed on Petitioner be vacated or rescinded.

With respect to the arrest warrant itself, Petitioner asks that matter be remanded to the state court and that if the state court finds or holds that the arrest warrant is still in effect that it be vacated or rescinded.

Respectfully Submitted,

s/_____
Aaron Raiser

Appendix A –

FILED: JUNE 29, 2007

IN THE SUPREME COURT OF UTAH

----ooOoo----

Aaron Raiser,
Petitioner,
v.
Brigham Young University,
Respondent.

Case No. 20070316-SC
Case No. 20060448-CA

ORDER

This matter is before the court upon a Petitioner for Writ of Certiorari, filed on April 18, 2007.

IT IS HEREBY CORDERED pursuant to Rule 45 of the Utah rules of Appellate Procedure the Petitioner for Writ of Certiorari is denied.

Dated June 27, 2007

For the Court:

s/
Christine M. Durham, Chief Justice

Petitioner's Note:
DENIAL DATE OF PETITION FOR WRIT OF CERTIORARI: 29 JUNE 2007

Appendix B -

IN THE UTAH COURT OF APPEALS

----ooOoo----

Aaron Raiser,
Plaintiff and Appellant,
v.
Brigham Young University,
Defendant and Appellee.

MEMORANDUM DECISION
(Not For Official Publication)
Case No. 20060448-CA
F I L E D
(March 22, 2007)
2007 UT App 105

Fourth District, Provo Department, 020403619
The Honorable Fred D. Howard
Attorneys: Aaron Raiser, Canoga Park, California, Appellant Pro Se
Daniel L. Steele and David M. Kono, Salt Lake City, for Appellee

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Before Judges Greenwood, Davis, and McHugh.
PER CURIAM:
Aaron Raiser appeals from various decisions issued by the district court, including two attorney fees awards entered in favor of Brigham Young University (the University) pursuant to rule 11 of the Utah Rules of Civil Procedure, see Utah R. Civ. P. 11, and a denial of Raiser's motion to amend his complaint. We affirm.

Raiser asserts that he, rather than the University, is

entitled to attorney fees and costs under rule 11 because the University's arguments regarding removal were not warranted by existing law. At the same time, Raiser argues that the district court erred when it imposed fees upon him after finding no violation under rule 11.

"Review of rule 11 determinations requires different standards of review depending on the issue considered." K.F.K. v. T.W., 2005 UT App 85,¶4, 110 P.3d 162 (citing Griffith v. Griffith, 1999 UT 78,¶10, 985 P.2d 255). As set forth in K.F.K. v. T.W.:

The trial court's findings of fact are reviewed under a clearly erroneous standard; its ultimate conclusion that rule 11 was [or was not] violated and any subsidiary legal conclusions are reviewed under a correction of error standard; and its determination as to the type and amount of sanctions to be imposed is reviewed under an abuse of discretion standard. Furthermore, to warrant rule 11 sanctions, factual errors or misstatements must be significant. Id. (quotations and citations omitted).

Here, the district court discussed the underlying procedural details and determined that the University's decision to remove this case to federal court "was not done with an improper motive or . . . without a basis in law. Though the federal court reached a different conclusion than [the University] or declined to assert its supplemental jurisdiction does [not] support a conclusion that [the University] violated [r]ule 11." Raiser fails to show that the district court's findings are clearly erroneous, and review of the record supports the findings. In addition, we have determined that the district court's conclusion that the University did not violate rule 11 is correct.

Furthermore, "under the plain language of rule 11, a court may award attorney fees to the prevailing party." K.F.K.,

2005 UT App 85 at ¶3; see also Utah R. Civ. P. 11(c)(1)(A) ("If warranted, the court may award to the party prevailing on the motion the reasonable expenses and attorney fees incurred in presenting or opposing the motion."). The University successfully opposed each motion for sanctions and was awarded its fees as the prevailing party. "There is no subsidiary finding of violation of rule 11 required to award attorney fees incurred in opposing a rule 11 motion." K.F.K., 2005 UT App 85 at ¶3. Thus, the district court did not err in awarding attorney fees to the University as the prevailing party on each of Raiser's motions for rule 11 sanctions.

Next, Raiser argues that the bench warrant that issued in this case was "improperly obtained." This issue is inadequately briefed. "It is well established that a reviewing court will not address arguments that are not adequately briefed." State v. Thomas, 961 P.2d 299, 304 (Utah 1998). Rule 24(a)(9) of the Utah Rules of Appellate Procedure states that the argument in the appellant's brief "shall contain the contentions and reasons of the appellant with respect to the issues presented, including the grounds for reviewing any issue not preserved in the trial court, with citations to the authorities, statutes, and parts of the record relied on." Utah R. App. P. 24(a)(9). Raiser's brief fails to comply with rule 24(a)(9) in regard to his bench warrant argument. In any event, Raiser has failed to show that the bench warrant was obtained improperly. The district court determined that rule 64(c)(2) of the Utah Rules of Civil Procedure "provides a basis in law for holding a post-judgment hearing to ascertain the assets of a judgment debtor." Raiser sets forth no argument that this ruling was erroneous.

Instead, Raiser sets forth an independent argument that the bench warrant was unconstitutional because it punished him for his impoverished financial status. As the University notes, the Utah Supreme Court held in Thomas v. Thomas, 569 P.2d 1119 (Utah 1977), that while the mere failure to pay a debt or

meet an obligation is not punishable by imprisonment[,] . . . . [W]hen a proper order or judgment has been made, one who stands in willful defiance or disobedience thereof may be found in contempt of court and punished by imprisonment. This is a necessary power of the court in order to enforce its orders and judgments. Id. at 1121. Because Raiser's refusal to participate in supplemental proceedings, rather than his financial status, caused the district court to issue a bench warrant, Raiser's constitutional concerns are unfounded.

Last, Raiser argues that the district court erred in denying his motion for leave to amend. This court reviews a district court's denial of a motion to amend for an abuse of discretion, see Kelly v. Hard Money Funding, Inc., 2004 UT App 44,¶14, 87 P.3d 734, reversing only when "the decision exceeds the limits of reasonability," Neztsosie v. Meyer, 883 P.2d 920, 922 (Utah 1994) (quotations and citations omitted). Rule 15(a) of the Utah Rules of Civil Procedure provides:

> A party may amend his pleading once as a matter of course at any time before a responsive pleading is served or, if the pleading is one to which no responsive pleading is permitted and the action has not been placed upon the trial calendar, he may so amend it at any time within 20 days after it is served. Otherwise a party may amend his pleading only by leave of court or by written consent of the adverse party; and leave shall be freely given when justice so requires. Utah R. Civ. P. 15(a).

The motion at issue here was Raiser's Motion to Amend Second Amended Complaint, and thus was not Raiser's first request to amend. The district court ruled that Raiser failed to give any explanation as to why a third amended complaint was necessary, particularly when it was filed five years after the acts complained of. Thus, the district court denied this

latest attempt to amend Raiser's complaint.

"[A] litigant seeking leave to amend must file a motion that shall be made in writing, shall state with particularity the grounds therefor, and shall set forth the relief or order sought." Coroles v. Sabey, 2003 UT App 339,¶43, 79 P.3d 974 (quotations and citations omitted). Moreover, "regardless of the procedural posture of the case, motions to amend have typically been deemed untimely when they were filed several years into the litigation." Kelly, 2004 UT App 44 at ¶30. In such cases the ongoing passage of time makes it increasingly difficult for the nonmoving party to effectively respond to the new allegations or claims. Parties in such circumstances are often hindered by witnesses who have since moved or died, by their shaky memories and recollections, or by documents which have since been lost or destroyed.Id.

Raiser's motion to amend not only failed to state any grounds therefor, but was filed long after his initial complaint and approximately five months after the order of remand was entered. Accordingly, Raiser fails to show that the district court abused its discretion when it denied his motion to amend.

s/
Pamela T. Greenwood,
Associate Presiding Judge

We affirm.

s/
James Z. Davis, Judge,

s/
Carolyn B. McHugh, Judge

Appendix C –

IN THE UNITED STATES COURT FOR THE DISTRICT OF UTAH CENTRAL DIVISION

AARON RAISER.
Plaintiff,
vs.
BRIGHAM YOUNG UNIVERSITY, and PROVO CITY,
Defendants.

Case No. 2:02-CV-975

ORDER

This matter is before the court on Defendant Brigham Young University's ("BYU") motion to consolidate and notice of removal. Defendant filed a notice of removal of two state court cases that allegedly contain the same factual allegations and the same parties as this case. The state court cases are:

Raiser v. Brigham Young University. Civil No. 020403144
Raiser v. Brigham Young University. Civil No. 020403619

28 U.S.C. § 1446(a) states that: "A defendant or defendants desiring to remove any civil action or criminal prosecution from a State court shall file in the district court of the United States in the district and division within which such action is pending a notice of removal signed pursuant to Rule 11 of the Federal Rules of Civil Procedure and containing a short and plain statement of the grounds for removal, together with a copy of all process, pleadings, and orders served upon such defendant or defendants in such action." 28 U.S.C. § 1446(a).

A defendant seeking to remove a ease from state court to federal court under 28 U.S.C.A. § 1446 must (I) file a notice of removal with the appropriate federal court, (2) promptly

file a copy of the notice with the clerk of the state court. and (3) promptly give written notice of the removal to all adverse parties." Farm Credit Bank of St. Paul v. Rub, 481 N.W. 2d 451, 455 (N.D. 1992) (citing 14A Wright, Miller& Cooper, Federal Practice & Procedure: Jurisdiction 2d § 3730 (1985)).

It appears that Defendant has not filed a copy of the Notice of Removal with the clerk of the state court, and therefore, the Notice of Removal is procedurally deficient. Moreover, removal is improper in this case because the court lacks subject matter jurisdiction over the state court actions. "In general. and of cardinal importance, an action is removable from a state court to a federal court only if it might have been brought in the latter originally." 14A Wright. Miller & Cooper. Federal Practice & Procedure: Jurisdiction 3d § 3721. "This requirement that all of' the conditions for original jurisdiction must be satisfied before removal will be allowed has been enforced in innumerable cases by courts at all levels of the federal judiciary." Id.

Defendant asserts that this court has jurisdiction over the state court cases pursuant to 28 U.S.C. § 1441(c). Specifically. Defendant contends that although the state court cases do not involve a federal question, they are subject to the court's supplemental jurisdiction pursuant to 28 U.S.C. § 1367(a), and are removable pursuant to 28 U.S.C. § 1441(c).

28 U.S.C. § 144 1(c) states: "Whenever a separate and independent claim or cause of action within the jurisdiction conferred by section 1331 of this title is joined with one or more otherwise non-removable claims or causes of action, the entire case may be removed and the district court may determine all issues therein, or, in its discretion, may remand all matters in which State law predominates."

Here. Defendant has failed to join the non-removable state claims with a cause of action within the jurisdiction of this

court conferred by 28 U.S.C. § 1331. Simultaneously consolidating the state court claims with an existing federal court case is insufficient to meet the requirements of 28 U.S.C. § 1441(c). Accordingly, Defendant has failed to establish that this court has original jurisdiction over the state court actions, and therefore, removal is improper.

Defendant's notice of removal is DENIED. Defendant's motion for consolidation is DENIED as moot.

DATED this 27 day of September, 2002.

BY THE COURT:

TENA CAMPBELL
United States District Judge

Appendix D –

In The Utah Court of Appeals

No. 2006-0448-CA

Aaron Raiser,
Plaintiff, Appellant

v.

Brigham Young University,
Defendant/Appellee

No Oral Argument Requested

Appeal from the Fourth District Court of Utah

Opening Brief of Appellant

Aaron Raiser, Pro Se
General Delivery
Canoga Park, Ca 91303

***

Issues on Appeal

***

3. Whether the trial court judge should have rescinded the arrest warrant for Appellant for his missing the supplemental hearing for BYU to collect the $2791.75 sanction, when the trial court found out (1) that Appellant, who resides in California, was homeless, near penniless, and as a result could not travel to the supplemental hearing, where the trial court judge was fully informed, under oath, Appellant's financial condition via affidavit (2) that URPC 3.3 was violated in obtaining the arrest warrant and (3) that URCP 69 upon which the Order was based does not exist?

4. Whether BYU violated the Utah Rules of Professional conduct in (1) appearing ex parte before the trial court judge, and obtaining an Order requiring Appellant to personally appear at a supplemental hearing in Utah to collect the $2791.75, or face arrest, where BYU was perfectly aware that Appellant was homeless, not having the financial means to travel to that supplemental hearing, where BYU failed to inform the trial court judge that Appellant did not have the means to travel to Utah and was in fact homeless – guaranteeing them the arrest warrant, where URPC 3.3 (d) requires BYU to inform the trial court judge of all of the pertinent facts needed for him to make a just determination in an ex parte proceeding; (2) in misleading the trial court judge that Utah R. Civ. Proc. 69 allowed for such a motion where Utah R. Civ. Proc. 69 in fact does not exist; (3) in abusing the ex parte proceeding process to obtain the Order leading to the arrest warrant where no compelling or unique circumstances warranted an ex parte proceeding, allowing BYU to secure the Order leading to the arrest warrant unopposed?

***

Issues Preserved On Appeal

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Issue 3 – R. 274 -268; 288

Issue 4 – R. 296 – 295; R. 393 – 427.

***

Statement of the Case

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Course of the Proceedings

***

Appellant also sought a stay in the trial court of enforcing the sanction. (R. 267) BYU then went before the trial court and claiming authority in URCP 69 which actually does not exist, obtained - ex parte – an Order requiring Appellant to appear in Utah for a supplemental hearing to collect the $2791.75 or face arrest. (R. 276-285) BYU was aware that Appellant was homeless in California and did not have the means to travel to Utah (R. 295-296; 422-427) but failed to disclose that to the trial judge when seeking the Order leading to Appellant's arrest warrant. (R. 276-285)

***

Summary of the Argument

1. The arrest warrant was improperly obtained and based on a sanction which was completely unfounded and both must be vacated. BYU deserved sanctions because the plain language of 28 U.S.C. §1441 showed the case could not be removed to federal court and a reasonable attorney would have read 28 U.S.C. §1441; the 1 year resulting delay was in fact prejudicial to Appellant's case.

2. BYU violated the Utah Rules of Professional conduct 3.3 (d) in (1) appearing ex parte before the trial court judge, and obtaining an Order requiring Appellant to personally appear at a supplemental hearing in Utah to collect the $2791.75, or face arrest, where BYU was perfectly aware that Appellant was homeless, not having the financial means to travel to that supplemental hearing, where BYU failed to

inform the trial court judge that Appellant did not have the means to travel to Utah and was in fact homeless, where URPC 3.3 (d) requires BYU to inform the trial court judge of all of the pertinent facts needed for him to make a just determination in an ex parte proceeding; (2) in misleading the trial court judge that Utah R. Civ. Proc. 69 allowed for such a motion where Utah R. Civ. Proc. 69 in fact does not exist; (3) in abusing the ex parte proceeding process to obtain the Order leading to the arrest warrant where no compelling or unique circumstances warranted an ex parte proceeding, allowing BYU to secure the Order leading to the arrest warrant unopposed. Due Process of Law under the Utah Constitution was violated by the manner in which the Order and arrest warrant was obtained.

3. ***

Argument

***

II.

The arrest warrant was improperly obtained and based on a sanction which unfair and therefore must be vacated

A. URCP 69 Does Not Exist

BYU obtained the arrest warrant based on the alleged existence of URCP 69. See R. 258. URCP 69 does not exist having been abrogated. See URCP 69.

Because the statutory authority relied on is URCP 69 and that rule is non-existent, the arrest warrant should be voided without further argument as a matter of law.

B. URPC 3.3 Violated

BYU went to the trial court to obtain the Order which would lead to the arrest warrant ex parte. That means Appellant was not present to be heard at the hearing.

URPC 3.3 imposes a special duty to an attorney admitted to practice law in Utah to be forthcoming with all

the information the judge needs to make a correct decision in an ex parte proceeding.
(d) In an ex parte proceeding, a lawyer shall inform the tribunal of all material facts known to the lawyer that will enable the tribunal to make an informed decision, whether or not the facts are adverse.

See URPC 3.3(d).

One material fact known to counsel for BYU was that Appellant was homeless in California, and did not have the financial means to travel to Utah for the hearing. In other words, BYU was guaranteed an arrest warrant for the Appellant by forcing him, ex parte, to attend in person a hearing in Utah so BYU could collect the $2791.75 and they preparing an Order which would cause a warrant for Appellant's arrest if he did not attend.

BYU was fully informed by Appellant of that fact at a hearing before a federal judge in Utah where Appellant appeared by phone from California. See R. 400:13-20. (Appellant informing the federal judge that he is homeless and barely had enough money for food from day to day.) Counsel for BYU were present at that hearing. R. 413.

Appellant does not see how BYU's malicious abuse of the ex parte proceeding to obtain an arrest warrant can be tolerated. If informing a trial judge that a party does not have the means to get to the hearing - guaranteeing the arrest warrant – is not material then what is? BYU was unethical in what they did and they violated URPC 3.3(d) in their conduct and the arrest warrant must be vacated as a result, the $1822.50 sanction against Appellant for his complaining about the arrest warrant vacated, and BYU themselves sanctioned.

C. Constitutionality of the Entire Process Is Questionable

Aside from URCP 69 not existing and the professional conduct rules violated, Appellant questions the legality of allowing a person to be arrested for not attending a

supplemental hearing.

It would appear to be an entirely civil matter and for BYU to collect their $2791.75, assuming they deserved it, would necessitate them taking the Order to a California court and proceeding to collect the money that way.

In other words, BYU stands in the shoes of a plaintiff seeking to collect a civil judgment or perhaps a plaintiff seeking damages from a defendant. The defendant can not be thrown in jail for not appearing in a civil case or not paying a civil judgment. The Utah Constitution generally forbids a person to be jailed for not paying a debt. Article I, Section 16.

The U.S. Supreme Court distinguished between civil contempt for performing an act forbidden (punishable by fine, not imprisonment) and not performing a required act. See Gompers v. Bucks Stove & Range Co., 221 U.S. 418, 442-444 (1911).

In the words of the Supreme Court, assuming Appellant could be imprisoned for missing the hearing, then Appellant would have to "hold the key" to get out of jail by performing the act that the court requires. But the Appellant is homeless and at the time near penniless. Appellant would thus be imprisoned, or has an arrest warrant out for him, not because he is disobeying a court order, but because he can not afford to comply with the court order to travel to Utah for the hearing. Thus to arrest someone solely on account of their status of being too poor to comply with a court Order, assuming it were valid, would appear to offend our sense of due process of law.

Related to the constitutionality of the arrest warrant and supplemental proceedings, Appellant notes that while preparing this brief it came to his attention that the signature

of the judge for the Order leading to Appellant's arrest was stamped. The signature of the trial judge appear at R. 452, 447, 421, 440, 488, 483, 366, 112. Only R. 256 – the Order re: Arrest for the hearing appears out of place.

What could be concluded is that a non-judicial officer decided the motion and stamped the judge's name on it which would appear to be a denial of due process of law. In other words, Orders which threaten a person with arrest can not be decided by a non-judicial officer. While the judge was the one who actually issued the arrest warrant, it appears improper to the Appellant if the judge's name were stamped on the supplemental proceeding Order stating Appellant would be arrested if not showing up at the hearing.

D. The Trial Judge Aware of Appellant's Poverty.

The trial court judge received a motion to proceed in forma pauperis (R. 274) where Appellant, under oath, disclosed his financial condition and poverty. The judge should have rescinded the arrest warrant on that alone. The judge in fact signed the Order allowing Appellant to proceed in forma pauperis (R. 274 signature at top of page) so the judge at least believed that Appellant was poor and that being the case should have rescinded it. Further, the purpose for the hearing was for Appellant to disclose all the assets he had in Utah which BYU could sell to collect their money. Yet the Appellant made, under oath, a statement showing he had no assets in Utah. The trial judge read that and was thus aware Appellant had no assets in Utah and the whole need for Appellant to be arrested and taken before judge Howard did not exist at that point as the judge had the exact information he sought. For these additional reasons the judge should have rescinded the arrest warrant.

E. Sanctions Against Appellant for Related Rule 11 Motion Improper

Appellant filed a Rule 11 motions for sanctions due to

BYU's improper conduct as described in obtaining the arrest warrant. Yet in response to what Appellant considers egregious conduct by BYU, the judge simply sanctioned Appellant an additional $1,822.50. R. 481. Because BYU's conduct was not only wrongful but in violation of the rules of professional conduct, Appellant's motion for sanctions had merit and can not be penalized. Thus the $1,822.50 sanction needs dismissing.

***

Respectfully,

DATED December 2, 2006

_____

Aaron Raiser

Appendix E –

In The Utah Court of Appeals

No. 2006-0448-CA

Aaron Raiser,
Plaintiff, Appellant

v.

Brigham Young University,
Defendant/Appellee

No Oral Argument Requested

Appeal from the Fourth District Court of Utah

Reply Brief of Appellant

Aaron Raiser, Pro Se
General Delivery
Canoga Park, Ca 91303

***

Reply Argument

***

II.
The Arrest Warrant Improper

A. Rule 69 Does Not Exist

Appellant questions whether BYU made a typographical error as they state. Rule 69 does not exist. That should be enough. To rely on a non-existent Rule for support to arrest a person is unconscionable. Rules are in place for a reason. They can not be discarded or overlooked. Proper procedure must be followed. If not what then is due process of law and why does the legislature and executive branches of government pass laws for the judiciary to execute and follow. But Rule 64, assuming that really was the statute relied on by BYU, does not authorize the movant for a supplemental hearing to issue an Order threatening the arrest of a person for not attending. The whole matter is troubling from a judicial perspective.

That BYU would mislead the judge that Rule 69 existed and allowed for the arrest of Appellant for not attending is unconscionable. The court system is not here to guess at statutes and manipulate the system to BYU's advantage. It is here to serve the interests of the state, and the state has set forth the proper manner in which things are to be done. Rule 69 does not exist. Rule 69 was relied on by BYU for the authority for its motion and arrest warrant clause of the motion for that supplemental hearing. That alone should be sufficient to vacate the entire mess created.

B. Signature Stamp Lacking As Required by UCRJA 4-403

A close look at the signature of the Order for supplemental hearing raises serious concerns as to whether it was

mechanically signed. Appellant, after close examination, believes, and comparison with the other signatures would support this, that it not signed by the actual judge. Remand would be proper to determine this if the Court can not take judicial notice of the signature on that Order.

If it is mechanically signed, then the clerk imprinting the signature must, according to Judicial Council Rules of Judicial Administration Rule 4-403 (1)(I) and (2) sign their name below the mechanical signature.

Because the Order for the hearing was mechanically signed and not subsequently signed by the clerk issuing it, as required by 4-403, the Order is then invalid.

Here, the weight of the evidence supports Appellant and begins to accumulate. Not only was Rule 69 non-existant, but the actual Order for the hearing violated 4-403.

As an officer of the court, BYU is assumed to be aware of 4-403 and is in all probability aware that it was issued by some clerk as they went personally to the court to obtain the Order ex parte.

C. URPC 3.3

The accumulation of evidence in Appellant's favor does not stop there. Additionally, BYU violated URPC3.3(d). BYU simply could have followed standard judicial procedure and filed a motion with the court for the supplemental proceeding, allowed Appellant a chance to respond (old-fashioned due process of law), and the court would then make a decision after hearing both sides on the matter. But BYU did not follow standard judicial procedure. They did everything ex parte. While BYU cites to no pressing reason for the need of an immediate ex parte hearing, they nonetheless sought everything ex parte and in so doing

URPC3.3(d) must govern their actions.

BYU App. Br. at 16 states "Specifically, Mr. Raiser's alleged poverty is not a material fact". Nothing could be farther from the truth. In order to prove contempt for failure to comply with court order it must be shown that person cited for contempt (1) knew what was required, (2) had ability to comply, and (3) intentionally failed or refused to do so, and trial court must enter written findings of fact and conclusions of law with respect to each of three substantive elements for contempt. See In re Cannatella, 132 P.3d 684, 686 (2006).

In the instant matter, assuming Appellant was being held in contempt of court, prior to issuing that bench warrant, the lower court would have had to make some finding as to whether Appellant had the ability to comply. So ability to comply is essential to the issuing of the warrant and BYU was perfectly aware that Appellant was homeless, in California, and barely had enough money to survive, yet remained silent when seeking that Order to require his attendance at the 7/19/05 hearing and then stood in silence when the judge issued the bench warrant.

Here, BYU however had an affirmative duty to not remain silent under URPC 3.3(d).As for the Constitutionality of the matter, Appellant was given no opportunity to be heard relative to his ability to attend the hearing.

***

Respectfully,

DATED January 28, 2007

_____

Aaron Raiser

Appendix F –

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF UTAH CENTRAL DIVISION
CIVIL NO. *2:04-CV-896*

T.G., PLAINTIFF,
VS.
THE CHURCH OF JESUS CHRIST OF LATTER-DAY SAINTS AND BRIGHAM YOUNG UNIVERSITY, DEFENDANTS.

APRIL 19, 2005 SALT LAKE CITY, UTAH

ALL PENDING MOTIONS BEFORE THE HONORABEL TENA CAMPBELL UNITED STATES DISTRICT JUDGE

APPEARANCES

FOR THE PLAINTIFF:
T.G [Aaron Raiser]

FOR DEFENDANT CHURCH:

KIRTON & MC CONKIE
BY: R. WILLIS ORTON, ESQ. STEPHEN W. GEARY, ESQ. 60 EAST SOUTH TEMPLE, #1800
P.O. BOX 45120 SALT LAKE CITY, UTAH 84145-0120
FOR DEFENDANT B.Y.U.:
BENNETT TUELLER JOHNSON & DEERE
BY: DANIEL L. STEELE, ESQ. 3865 SOUTH WASATCH BLVD., SUITE 300 SALT LAKE CITY, UTAH 84109
(801) 272-5600
COURT REPORTER:
RAYMOND P. FENLON 350 SOUTH MAIN STREET, #242 SALT LAKE CITY, UTAH 84101 (801) 809-4634
PROCEEDINGS

APRIL 19, 2005 3:00 P.M.

THE COURT: PLAINTIFF, YOU CAN HEAR ME, AM I CORRECT?

THE PLAINTIFF: YEAH, I CAN HEAR YOU OKAY.

THE COURT: ALL RIGHT. WE'RE HERE IN T.G., WHICH IS NOT A CORRECT NAME BUT IS A NAME THAT HAS BEEN PLACED ON THE PLEADINGS, VERSUS THE CHURCH OF JESUS CHRIST AND B.Y.U., HERE ON ASSORTED MOTIONS. REPRESENTING THE DEFENSE IS MR. STEELE FOR B.Y.U., MR. GEARY AND MR. ORTON FOR THE CHURCH. ***

THE COURT: *** ALL YOUR DISCOVERY MUST BE COMPLETED NO LATER THAN JULY 19TH, 2005. THIS DISCOVERY WILL CONSIST ONLY OF THE DEPOSITIONS OF MR. DAVIS, THE DEPOSITION OF MR. BRAMHALL AND THE DEPOSITION OF DAN TOWSEY.

MR. ORTON: CLARIFICATION, YOUR HONOR. IS THAT ORAL DEPOSITION? ***

THE COURT:: I BELIEVE, PLAINTIFF, WE NEED TO DO IT BY ORAL DEPOSITION, WHICH WOULD REQUIRE THAT YOU TRAVEL HERE ***

THE PLAINTIFF: PART OF THE PROBLEM IS RIGHT NOW I'M UNDER SEVERE FINANCIAL CONSTRAINTS. TO BE HONEST, I AM HOMELESS, YOUR HONOR, AND I AM UNDER SEVERE CONSTRAINTS JUST TO FIND ENOUGH MONEY TO GET ENOUGH FOOD FROM DAY TO DAY SO IT'S GOING TO BE DIFFICULT FOR ME TO TRAVEL. I WOULD PREFER TO BE ABLE TO DO THIS JUST BY WRITTEN INTERROGATORIES, ETCETERA, OR PERHAPS BY PHONE. BUT I'D RATHER DO THIS BY WRITING. *** (CONCLUDED AT 3: 35 P.M.)

Appendix G –

ORDER

THE STATE OF UTAH TO PLAINTIFF AARON RAISER: IT IS HEREBY ORDERED that, pursuant to the foregoing Motions and good cause appearing, you appear in person before this Court at the time and place shown below to answer questions, under oath, concerning your property

Date: July 19, 2005 Time: 8:45 an.

Place: Fourth District Court
Utah County
125North 100 West
Provo, Utah 84601

YOU ARE FURTHER ORDERED not to sell, loan, give away, or otherwise dispose of your non-exempt property pending the hearing.

If you have been personally served with this Order and you fail to appear, the Court may order a Warrant for your arrest.

DATED this 23 day of May, 2005.

s/_____
Judge Fred Howard

Daniel L. Steele (6336)
David M. Kono (8770)
BENNETT TUELLER JOHNSON & DEERE
3865 South Wasatch Blvd., Suite 300
Salt Lake City, Utah 84109
Telephone No.: 801-272-5600
Facsimile No. : 801-2781541

IN THE FOURTH JUDICIAL DISTRICT COURT IN AND FOR UTAH COUNTY, STATE OF UTAH

AARON RAISER,
Plaintiff

vs.

BRIGHAM YOUNG UNIVERSITY,
Defendant,

Civil No.: 020403619

Judge Fred D. Howard

MOTION AND ORDER FOR SUPPLEMENTAL PROCEEDINGS

Defendant Brigham Young University, by and through its undersigned counsel and pursuant to Rule 69 of the Utah Rules of Civil Procedure, hereby moves the Court for an Order requiring Plaintiff Aaron Raiser to appear before this Court to answer questions, wider oath, concerning his property, and to restrain Plaintiff from disposing of, transferring, selling or conveying any of his non-exempt property which he owns or controls pending the hearing.

This Motion is based on the files and records in the above-entitled action, which reflect that on the day of May, 2005,

Defendant registered a Judgment against Aaron Raiser of the above-captioned case. A copy of the Judgment is attached hereto as Exhibit A and incorporated herein by this reference. The Judgment has not been satisfied.

DATED this 24 Day of May, 2005
BENNETT TUELLER. JOHNSON & DEERE

David Kono
Attorneys for Defendant

Plaintiffs Business Address:
Aaron Raiser
7121 Carlson Circle [Del Taco]
Canoga Park, CA 91303
(818) 346-8167